

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

<b>GARRET SITTS, et al.,</b>  <b>Plaintiffs,</b>  <b>v.</b>  <b>DAIRY FARMERS OF AMERICA, INC. and</b> <b>DAIRY MARKETING SERVICES, LLC,</b>  <b>Defendants.</b>	<b>Civil Action No. 2:16-cv-00287-cr</b>
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**DEFENDANTS DAIRY FARMERS OF AMERICA, INC. AND**  
**DAIRY MARKETING SERVICES, LLC’S**  
**NOTICE OF REVISED PROPOSED JURY INSTRUCTIONS**

During the August 10, 2020 charge conference, the Court instructed Defendants Dairy Farmers of America, Inc. and Dairy Marketing Services, LLC (collectively “DFA”) to propose revisions to a limited number of specific jury instructions within the larger set of instructions that the Court used for discussion during that charge conference.<sup>1</sup> In response to the Court’s instructions, DFA respectfully submits its proposed revisions to those specific instructions in Attachment A. Each of those instructions in Attachment A is highlighted in yellow, and they are as follows:

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<sup>1</sup> The Court also instructed plaintiffs to propose revisions to certain other instructions within the set of instructions that the Court was using for discussion during the August 10, 2020 charge conference. DFA has not yet had the opportunity to review plaintiffs’ new proposed instructions and reserves all rights to object to such instructions at the appropriate time.

- Section 1 Instructions:
  - The Elements of a Section 1 Claim, and, in particular, the way in which the rule of reason burden shifting analysis fits into the elements of a Section 1 claim;
  - Parallel Conduct; and
  - The Participation and Intent Element of a Section 1 Claim.
- Section 2 Instructions:
  - Refusal To Deal; and
  - The Elements of a Section 2, Conspiracy to Monopsonize Claim.
- Additional Instructions:
  - The Capper Volstead Act.

In addition, pursuant to the Court's request that DFA identify any instructions that it believes are missing from the set that the Court used for discussion during the August 10th charge conference, DFA proposes the following instructions (also each highlighted in yellow):

- Each Plaintiff's Individual Burden Of Proof;
- Section 1 Instructions:
  - Exclusive Dealing;
  - Joint Ventures; and
- Damages – Causation and Disaggregation.

Apart from the inclusion of these proposed or revised jury instructions, highlighted in yellow in the attached filing, DFA has not altered the remaining jury instructions, originally circulated by the Court on August 10, 2020, in Attachment A. DFA nonetheless retains all prior objections to such jury instructions—as set forth both in DFA's Objections to Plaintiffs' Proposed

Jury Instructions, ECF No. 293, and at the August 10, 2020 charge conference—and reserves the right to assert further objections at the September 1, 2020 charge conference and in response to plaintiffs’ proposed revised instructions.

DFA reserves the right to further amend its proposed jury instructions, including as a result of the September 1, 2020 charge conference, and/or the Court’s ruling on any pending motion, its rulings during trial (including pursuant to Federal Rule of Civil Procedure 50) and/or its resolution of any other dispute that bears on the legal claims in this case. DFA also reserves the right to respond and/or object to the portions of the Court’s proposed jury instructions, circulated to the parties on August 19, 2020, *see* August 19, 2020 Email from Jennifer Ruddy and attachment, prior to, during and/or following the upcoming September 1, 2020 charge conference. For ease of reference, DFA will respond to the Court’s proposed revised instructions from August 19, 2020 separately and not as part of Attachment A herein.

Dated: August 24, 2020

Respectfully submitted,

/s/ Alfred C. Pfeiffer Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 24, 2020, I electronically filed with the Clerk of Court the foregoing document using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

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Dated: August 24, 2020

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